



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FTI/143720

PRELIMINARY RECITALS

Pursuant to a petition filed September 07, 2012, under Wis. Stat. §49.85(4), and Wis. Admin. Code §§HA 3.03(1) and (3), to review a decision by the PACU - 5173 in regard to FoodShare benefits (FS), a telephonic hearing was held on October 02, 2012.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Aimee Rentmeester
PACU - 5173

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 13, 2012, the agency sent a written notice of negative action to the petitioner.
3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on September 7, 2012.
4. The negative action in this case was a tax intercept to recover an FoodShare (FS) overpayment.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning a PACU Tax Intercept must be filed within 30 days of the date of the action. See Wis. Stat. §49.85(3)(b)2; see also §§49.85(4) and 227.44. The negative action in this case was a tax intercept to recover an FS overpayment. The petitioner's appeal was filed 56 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

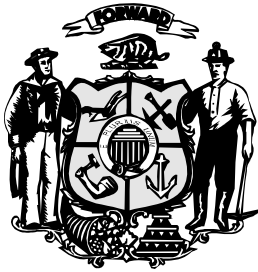
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of December, 2012

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 17, 2012.

PACU - 5173

Public Assistance Collection Unit

Division of Health Care Access and Accountability